

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1664

SEPTEMBER TERM, 2014

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CINDY WALSH

v.

BOBBIE MACK, ET AL.

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Eyler, Deborah, S.,  
Arthur,  
Kenney, James A., III  
(Retired, Specially Assigned),

JJ.

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Opinion by Eyler, Deborah, S., J.

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Filed: September 16, 2015

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland court as either precedent within the rule of *stare decisis* or as persuasive authority. Md. Rule 1-104.

Cindy Walsh, the appellant, was a candidate in the 2014 Democratic primary for Governor of Maryland. After the June 24, 2014 primary election, she filed suit in the Circuit Court for Baltimore City against the appellees: Bobbie Mack, the chairman of the Maryland State Board of Elections (“State Board”); Douglas Gansler, in his capacities as the Maryland Attorney General and as a candidate for Governor; Linda Lamone, the State Election Administrator; Anthony Brown, then Lieutenant Governor and a Democratic candidate for Governor; and Heather Mizeur, a Democratic candidate for Governor.<sup>1</sup> Walsh sought to invalidate the primary election results and to recover damages.

The circuit court granted the appellees’ motions to dismiss the amended complaint, concluding that it failed to state a claim upon which relief could be granted, and also was untimely under the Election Law Article. In this appeal, Walsh poses six questions,<sup>2</sup> which we have condensed and rephrased as one: Did the circuit court err by

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<sup>1</sup> We shall refer to Mack, Lamone, and Gansler in his capacity as Attorney General collectively as “the State Defendants” and Brown, Mizeur, and Gansler in his capacity as a candidate collectively as “the Candidate Defendants.”

<sup>2</sup> The questions verbatim as posed by Walsh are:

1. Did the circuit court err or abuse its discretion in granting a dismissal without allowing the plaintiff opportunity through hearing or trial to present the case?
2. Did the circuit court err or abuse its discretion in failing to address the individual legal issues in the complaint in the order for DISMISSAL. The use of vague terms like ‘scattershot’ rather than the legal basis of the complaint such as 501c3 violations of election law by Brown, Mizeur, and Gansler as well as many 501c3 organizations. False Statement violations in misrepresenting a government document that is the Maryland Board of Elections List of Democratic Candidates for

dismissing the amended complaint? We answer this question in the negative and shall affirm the judgment of the circuit court.

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(...continued)

- Governor in election events, and The deliberate and willful neglect by the Maryland Board of Elections to monitor election event activities and 501c3 obligation to the State and Federal election law all clear violations dismissed as not relevant.
3. Did the circuit court err in siting the date of July 21, 2014 as the date the plaintiff filed the original complaint? The actual date of filing the original complaint was July 11, 2014.
  4. Did the circuit court err or abuse its discretion in failing to assign a time line to trial a case that by Maryland law was to be expedited. Allowing the plaintiff no relief from motions to follow an expedited management path as required by Maryland law regarding election challenges for Governor of Maryland and no communication to motions to do so, delaying the appeal of this case by weeks. This case was filed July 11, 2014 and the defendants served July 21, 2014. Thirty days from service and 15 days for Amended Complaint would place this case's decision no later than early September on an expedited path.
  5. Did the circuit court err or abuse its discretion when the judge dismissed the case on September 22, 2014 and the Clerk of the Court enters the decision on October 2, 2013 with an expedited case? Did the Clerk of the Court do undue harm in mailing the decision to the plaintiff on a Friday October 3, 2014 knowing that the time line for appeal in this expedited case was 5 days. The plaintiff had no opportunity to serve the defendants with notice to appeal and file with the court.
  6. Did this court process work in the spirit of the law giving a contest of election an expedited status when the plaintiff is now entering an appeal in mid-October with the general election for Governor of Maryland on November 3, 2014? Since the complaints before the circuit court are valid and irregularities did in fact change the results in the election for Democratic candidate for Governor of Maryland, the plaintiff will need this current general election vacated and another scheduled.

## FACTS AND PROCEEDINGS

The primary election was held on June 24, 2014. Walsh received 6,863 votes. Lieutenant Governor Brown received 249,398 votes and won the Democratic primary. Seventeen days later, on July 11, 2014,<sup>3</sup> Walsh filed her complaint in the circuit court, naming Mack, Gansler, Brown, and Mizeur as defendants. On August 8, 2014, Walsh amended her complaint to add Lamone as a defendant and to clarify that she was suing the defendants in their individual capacities.

Walsh alleged that she was “systematically excluded from election coverage by Maryland media and election events by major 501c3 [sic] organizations” and that these “election irregularities” changed the outcome of the primary election. She alleged that the State Defendants “failed in their duties of oversight and enforcement of Maryland and Federal Election Law” and that the Candidate Defendants “knowingly violated election law and ignored and participated in election venues that violated election law.” She asked the court to invalidate the Democratic primary election results; find the Attorney General’s Office and the State Board “guilty of failing to perform the duties of their office” and place them under court supervision; find the Candidate Defendants “guilty of failing to honor their oath of office” to uphold the election laws; disqualify the Candidate Defendants as candidates and name Walsh as the winner of the primary or, alternatively,

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<sup>3</sup> Walsh’s complaint bears a date stamp of “07/11/14” (a Friday) but was not docketed until July 14, 2014 (a Monday). For purposes of this opinion, we shall treat her complaint as having been filed on July 11, 2014.

allow her to run in the 2014 General Election as a Green Party candidate; and award her \$500,000 to cover her costs in running for election and filing the instant action.

On August 22, 2014, the State Defendants moved to dismiss the amended complaint for failure to state a claim. They argued that Walsh’s complaint was untimely and failed to state a claim under Maryland Code (2002, 2010 Repl. Vol.), section 12-202 of the Election Law Article (“EL”) and that they were immune from liability for damages because all of the alleged wrongful conduct occurred within the scope of their public duties and there was no allegation of malice or gross negligence. Brown and Gansler filed separate motions to dismiss, on August 22 and 25, 2014, respectively, arguing that the amended complaint failed to state any cognizable cause of action against them. Walsh opposed the motions to dismiss.<sup>4</sup>

By order dated September 22, 2014, and entered October 2, 2014, the court granted the motions and dismissed the amended complaint.<sup>5</sup> The court opined that the allegations of the amended complaint utilized a “scattershot approach to claim election

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<sup>4</sup> As relevant here, pursuant to Rule 2-311(f), a party desiring a hearing on a motion to dismiss must “request the hearing in the motion or response under the heading ‘Request for Hearing’” and state in the title of the motion or response that a hearing is requested. In the instant case, none of the parties requested a hearing on the motions to dismiss, and none was held.

<sup>5</sup> The amended complaint did not allege wrongdoing by Mizeur that differed in any respect from the allegations against Brown and Gansler. Thus, while Mizeur did not file a separate motion to dismiss the amended complaint, the court treated the motions to dismiss filed by Brown and Gansler as having been filed on behalf of the three Candidate Defendants and dismissed all of the claims against them.

‘irregularities’ and election law violations.” The allegations were “vague and conclusory” and did not present any facts “even hinting of wrongdoing by election officials or gubernatorial candidates.” The court further ruled that Walsh’s complaint was untimely under EL section 12-202, which governs judicial challenges premised on violations of the election laws and requires that any such action be brought no later than the earlier of 10 days after the act or omission became known to the plaintiff or, in the case of a gubernatorial primary election, 3 days after the results of the election have been certified.<sup>6</sup>

On October 9, 2014, Walsh noted this timely appeal.

### **DISCUSSION**

We review *de novo* the grant of a motion to dismiss for failure to state a claim for which relief may be granted. *Gasper v. Ruffin Hotel Corp. of Md., Inc.*, 183 Md. App. 211, 226 (2008). In so doing, we “assume the truth of all relevant and material facts that are well pleaded and of all inferences which can be reasonably drawn therefrom.” *Tri-County Unlimited, Inc. v. Kids First Swim School, Inc.*, 191 Md. App. 613, 619 (2010). “Dismissal is proper only when the alleged facts and permissible inferences, even if later proven to be true, would fail to afford relief to the plaintiff.” *Morris v. Osmose Wood Preserving*, 340 Md. 519, 531 (1995).

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<sup>6</sup> The court stated that Walsh’s original complaint was filed on July 21, 2014. As noted earlier, the complaint was date-stamped on July 11, 2014, and docketed on July 14, 2014. In any event, the complaint was filed at least seventeen days after the primary election.

In this case, the amended complaint makes general allegations that the State Defendants failed to enforce the election laws, but does not identify any specific act or omission by any of them that was in violation of the election laws. Walsh vaguely alleges that the State Defendants failed to respond to or investigate her complaints about “election irregularities” but does not give the substance of any of those complaints or even the dates on which she made them. With respect to the Candidate Defendants, Walsh alleges only that they excluded her from “primary forums”; she does not allege that the Candidate Defendants organized or sponsored the forums, nor does she point to any law or regulation requiring that a candidate be included in every debate or other candidate forum.

Walsh’s action also was subject to dismissal because it was untimely. All of her claims pertain to pre-election acts or omissions by the State Defendants and the Candidate Defendants that necessarily would have been known to her by, at the latest, June 23, 2014 (the day before to the primary election). Pursuant to EL section 12-202(b), Walsh was obligated to file suit within 10 days of the date that an act or omission in violation of the election laws was known to her, or by July 7, 2014.<sup>7</sup> Thus, her complaint filed on July 11, 2014 was untimely.

For all these reasons, the circuit court did not err by dismissing the amended complaint.

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<sup>7</sup> July 7, 2014 was the first business day after July 4, 2014, the date when the 10-day period expired.

**JUDGMENT AFFIRMED. COSTS  
TO BE PAID BY THE APPELLANT.**